

## **Comments of MXenergy to ICC ORMD's Inquiry of August 28, 2008**

MXenergy is pleased to offer these brief comments in response to the inquiry from the ICC's Office of Retail Market Development.

### **Section 1**

MXenergy supports the use of utility-administered referral programs that encourage customers to consider an alternative retail electric supplier (ARES) for electric supply. When customer awareness of electricity choice and ARES is low, referral programs can help jump-start customer participation in a utility's choice program, and provide needed education about such programs, as proven in several of the New York utility markets. Utilities administering these programs provide the much needed comfort to customers that it is OK to choose supply from someone other than the utility.

MXenergy's primary concern with referral programs is with ARES being allocated cost for a program the ends up being ineffectual. MXenergy's observation is that the success of such referral programs is dependant more on the utility's commitment than on any specific feature of the program. Simply put, a utility motivated to build an educated and shopping-knowledgeable customer base is much more likely to achieve success than a utility going through the motions to satisfy a legislative or regulatory mandate to offer a referral program. There is no inherent guarantee that a referral program will be successful just because it is offered. These outcomes were observed in New York State where several utilities implemented referral programs in 2006. While most of these programs were quite successful, two programs were not.

How best to motivate utility commitment? Cost recovery can be part of the solution and part of the problem, depending on how it is structured. No guarantee of cost recovery can dissuade utility commitment; but similarly absolute guarantees of cost pass through do not necessarily create commitment. MXenergy suggests the Commission adopt an incentive plan that can result in compensating the utility above cost for a superior program and exposes the utility to less than full cost recovery for an ineffective program. This type of cost recovery can be structured in different ways. One such structure is where each participating ARES pays the utility on a \$ per referral basis. If stakeholders instead prefer a non-incentive cost recovery mechanism then recovery through distribution rates is appropriate as all customers benefit from the referral program through the enhanced level of education and switching opportunity. The least effective recovery mechanism is one which splits the program costs among participating suppliers – this scheme simply discourages suppliers from participating by creating an unknown, unpredictable and perhaps prohibitively expensive cost of customer acquisition.

The most important characteristics of the program are those that make the program easy to administer, easy for the utility call center representative to communicate and risk free for the customers. Specifically:

- Let the customer choose either an ARES by name, if they have one in mind, or assigned a participating ARES on a rotating basis. To minimize time spent by the utility rep, the rep should not have to read off the list of participating ARES.
- Customer agreeing to participate receives a standard 7% off the utility rate for two months (“Introductory Offer”). This Introductory Offer is uniform

for all ARES in order to make the program easy and efficient for the utility customer service rep to describe the program to customers.

- Utilities perform the two-month rate discount calculation to ensure customers correctly receive their two months worth of discounts.
- The ARES are responsible for the electricity supply and receive the revenue during the Introductory Offer period consistent with normal revenue payment and settlement processes.
- Utilities send referral enrollments to suppliers to ensure proper enrollment. This is the same model as used in New York and would allow ARES to leverage system processes already in place.
- Immediately (e.g. within 7 days) after enrollment, ARES must send the customer their price offer for the post-introductory offer period. The timing of these offers provides the customer sufficient time to shop before the expiry of the introductory period.
- If the customer does not proactively choose a different offer, whether from the same or different ARES, then the customer continues on with the original ARES at the post-introductory period price offer noticed in the offer letter.
- The customer will continue on at the introductory offer price until such time that the ARES changes them to the post-introductory offer price or the customer switches suppliers. The utility will prevent the introductory price from being changed prematurely to ensure the customer receives the full two month discount.

- ARES are not allowed to charge a contract early termination fee during the introductory offer period. An early termination fee is also not allowed for the post-introductory offer period unless the customer provides affirmation per normal contracting regulations.
- Customers can only participate one time.

MXenergy believes that the best way to establish these programs is through a formal rule making case. The final rule making would set the overall framework of the program's administration, consumer protection and cost recovery. Each utility would then be required to file the specifics of their program, including required tariff modifications, and demonstrate how the program meets the final ruling making. However, it may be more expedient to have the Commission issue guidelines as to what it would like to see in a referral program. These guidelines could be developed collaboratively under the guidance of ORMD. Each utility would then file the specifics of their program but in compliance with the Commission guidelines. Utilities may need to modify their tariffs so as to include the "Introductory Price" period as customers would be agreeing to this with the utility. Having this within the tariff would allow the utilities to offer and bill customers under this rate.

The three referral programs described in SB 1299 should not be viewed as distinct or mutually exclusive options but as subtle variations to a common theme. The common theme of all three programs or "program components" is that a customer's normal communications with the utility – be it a call for service initiation, receiving a bill, or a call for service to ask a question – is used as a means to promote and publicize the

existence of retail choice options. A comprehensive referral program could integrate features of all three programs listed in SB 1299.

While it would be desirable to have all three program components implemented at the same time, components 1 and 3 (as listed in the set of questions) are most consistent with each other, would require the same set of system changes and would help educate the greatest number of customers in the short term. The roles of the utility and the supplier for these two components were described above in the bullets regarding the important characteristics of the program. The Commission's role should be one of setting the program rules or guidelines for program structure, consumer protection and approving the utility specific programs and tariffs.

MXenergy is not aware of other possible programs than those already being discussed by the ORMD working group.

## Section 2

MXenergy does support the appropriation of funding from the General Revenue Fund for the expenses of the Commission associated with Section 16-117. We see the most beneficial role for consumer education by the Commission is in the creation and support of a website similar to the "Power to Choose" websites for New York (<http://www.energyguide.com/finder/NYFinder.asp>) and Texas (<http://www.powertochoose.org/>). A lot of collaboration by various stakeholders went into the creation and improvement of the New York Power to Choose site. As such, MXenergy strongly encourages the Commission to use this as the model for developing its own site.

The ARES role would be supporting this site by providing timely submissions of their current price offers. The utilities role in consumer education is very important since the utility has multiple touch-points with customers. Such support should include:

- The periodic use of the bill to communicate electric choice through bill messages and/or inserts to promote choice,
- The creation and implementation of a referral program and
- Development and maintenance of their own webpage with the link to it prominently displayed on their home page.

MXenergy supports the adoption of uniform disclosure requirements that allow consumers to compare prices, terms and conditions. Electricity products and their pricing can be complicated and appear confusing to the majority of consumers, even those who are well educated and otherwise savvy shoppers. The industry's effort to educate consumers would benefit from having those consumers see consistent pricing formats.

Uniform disclosure requirements also discourage marketers from purposely failing to prominently disclose certain adverse features of their contract or presenting prices in a way that misleads a consumer. The Commission could always relax uniform disclosure requirements at a later date when consumers' understanding of electric products was higher, or when the integrity and value of ARES products was more widely recognized and accepted.

As noted in the Request for Comments from ORMD, the Texas PUC recently proposed changes to its rules dealing with information and pricing disclosures. The proposed rules would adopt standard definitions for fixed price products, and prevent

marketers from advertising a product as fixed if it did not have the characteristics contained in the fixed price definitions. Those proposals go on to cover renewal provisions, advertising claims, early termination fees, content of Electricity Facts Labels (EFLs), and other detailed consumer protection measures.

Without getting into every last detail of the proposals, MXenergy, which is a supplier in the Texas retail market, strongly supports the adoption of those proposed rules by the Texas PUC. The PUC proposals come in the wake of several Retail Electric Provider (REP) defaults in the ERCOT market and strong Commission action was necessary to shore up public confidence in the competitive market and prevent abuses by incompetent or poorly equipped REPs.

The proposed product definitions and many of the proposed disclosure requirements in Texas would serve as a workable starting point for similar purpose in the Illinois market. However, it is important to review each proposal to assure it does not stifle innovation and further development of the Illinois retail market. Unlike Illinois, all electric consumers in Texas in open market areas are with a competitive supplier; a regulated standard service or default offer is not an option for these customers.

The Texas proposals are a good solution for Texas and many may be an effective solution for Illinois. Our comments are not meant to imply that all of the new Texas requirements are right for Illinois. Experience and initiatives in other states may also provide useful; Connecticut, Ohio and New York, for example, have recently proposed new disclosure requirements to increase consumer protection and they also would provide a good benchmark for Illinois.

MXenergy supports customer lists being provided to ARES by the utility where customers have the opportunities to opt out of the list at any time. MXenergy can not provide an opinion at this time as to whether Section 16-122 would or would not allow utilities to provide customer lists to suppliers and/or if the Commission could adopt a similar rule as in the February 5, 2008 Order in the Peoples Gas and North Shore Gas case.

MXenergy would like to see stronger consumer protections rules for the competitive retail electricity markets, as well as for natural gas. We see this as the role of the Commission in conducting a rule making case and issuing final orders. This would allow all the stakeholders to have formal input into the regulations. Desirable consumer protection regulations should cover:

- Marketing practices specifically in the area of outbound telemarketing and door to door sales. The New York Commission, for example, recently proposed specific additions to its Uniform Business Practices (Section 10) which among other things, requires marketing representatives to terminate telemarketing calls when it is apparent that the customer's language skills are insufficient to understand and respond to the information being presented; the same is true for a door-to-door sale. Door-to-door sales would also be required to be conducted by agents prominently wearing suitable identification, and such agents must leave the premises immediately when requested to do so.



- Price Offer disclosure, including the meaning of “fixed” price. As noted earlier, the Texas PUC has proposed specific definitions of fixed price products which are intended to give the consumer an indication of how and when “fixed” rate products really might not be fixed.
- Advertising Claims. Advertising claims should be truthful, not deceptive, and supportable. The Texas proposals would require that any claim about savings or environmental quality made in television, radio and internet advertisements be supportable by information that substantiates the claim and which is available upon request.
- Third party verification of all door-to-door and telemarketing sales. It is important to the integrity of the sales process that sales via these channels be further validated by an independent third party on a recorded phone call. The British Columbia Utilities Commission has adopted a Code of Conduct for marketers which includes (Article 32) specific topics that must be covered in the TPV script, such as customer understanding of the price, terms, and cancellation rights of the agreement, verification of customer identity and authority to enter into the agreement, and customer understanding of the marketer’s identity and that the product will not necessarily save the customer money.

To summarize:

(1) MXenergy supports referral programs but to be successful, referral programs must be administered by properly motivated utilities whose cost recovery is tied to their proficiency in administering the program; and

(2) Consumer friendly uniform disclosure requirements are essential to a strong competitive retail market; MXenergy supports using the new rules proposed in Texas (and perhaps other states) as a good starting point for discussion on rules that should be adopted for Illinois.

(3) Similarly, strong consumer protection measures are necessary to protect the integrity of the competitive retail market. The Commission should adopt measures that protect consumers from false advertising, unscrupulous or deceptive marketing, and that require third party verification of door-to-door and telemarketing sales.